(4)

No. 05-1555

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

KRISHNA MAHARAJ,

Petitioner,

v.

SECRETARY FOR THE DEPARTMENT OF CORRECTIONS FOR THE STATE OF FLORIDA,

Respondents.

PETITION FOR REHEARING OF DENIAL OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

WHETHER, GIVEN A CASE FOR INNOCENCE THAT IS COMPELLING, THE CASE SHOULD BE REMANDED TO THE LOWER COURT FOR FURTHER CONSIDERATION IN LIGHT OF *HOUSE v. BELL*?

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Petitioner, Krishna Maharaj, prays that rehearing be granted of his petition for a writ of certiorari to review the judgment of the Court of Appeals for the Eleventh Circuit:

OPINIONS BELOW

The judgment of the Eleventh Circuit Court of Appeals in *Krishna Maharaj v. Secretary, Department of Corrections*, 432 F.3d 1292 (11th Cir. 2005) (*Maharaj VI*), is attached to Mr. Maharaj's original petition for certiorari as **Appendix A**. The Eleventh Circuit's denial of Petitioner's application for rehearing, on January 25, 2006, was likewise previously attached as **Appendix B**. Petitioner's Motion for a Certificate of Appealability was attached as **Appendix C**. The Eleventh Circuit's Denial of Petitioner's Motion for Certificate of Appealability was attached as **Appendix D**. The District Court's Order Granting Certificate of Appealability was attached as **Appendix E**. The District Court's Denial of Petitioner's Petition for Habeas Relief was attached as **Appendix F**.

This Court denied the petition for certiorari on October 2, 2006. *See* **Appendix G**, *Maharaj v. McDonough*, No. 1555 (Oct. 2, 2006).

STATEMENT OF JURISDICTION

The timely application for rehearing of the Eleventh Circuit's judgment was denied on January 25, 2006. Petitioner timely filed with this Court on April 25, 2006. Certiorari was denied on October 2, 2006. This petition for rehearing is timely filed. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following provisions:

The Eighth Amendment to the Constitution of the United States, which provides in pertinent part:

> Excessive bail shall not be required . . . nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the Constitution of the United States, which provides in pertinent part:

> [N]or shall any state deprive any person of life, liberty or property without due process of law. . . .

STATEMENT OF THE CASE

The statement of the case was exhaustively included in Mr. Maharaj's original petition. Briefly, for purposes of the current pleading, Krishna Maharaj was originally sentenced to death for an offense that took place exactly twenty years ago, on October 16, 1986. The death sentence imposed on one count of the indictment was reversed and a life sentence imposed. Petitioner has already spent twenty years in prison for a crime that he did not commit and, if this Court does not intervene, he stands condemned to spend the rest of his life there.

STATEMENT OF FACTS

Mr. Maharaj is *innocent of the charges.* He has been wrongfully convicted and languished for twenty years in prison for a crime he did not commit. The Eleventh Circuit glossed over the newly discovered evidence of his innocence. The State of Florida did not even bother to file a response to his petition for certiorari filed with this court. If this Court does not grant him a proper hearing, nobody will and he will spend the rest of his life in prison for a crime that someone else did.

1. Introductory Facts

At trial, the prosecution argued Mr. Maharaj had murdered Derrick and Duane Moo Young, two allegedly impoverished businessmen whose tax returns revealed an income of little more than $20,000 a year. The prosecution had a motive – antipathy between Petitioner and the victims. The prosecution had an "eye witness," Neville Butler. The

prosecution had fingerprints proving that Petitioner had been in the room where the murders took place, Room 1215 of the downtown Miami Dupont Plaza Hotel. A reasonable juror would wonder: who could have committed the crime but Petitioner?

There were some facts the jury did know – but they could not know the significance. For example, the only other room on the twelfth floor that was occupied, Room 1216 right across the hall from the murder scene, had blood outside the door, and was occupied by a Colombian named Jaime Vallejo Mejias. He left the country immediately after the crime.

Room 1215 was registered in the name of a man called Eddie Dames who, everyone conceded, Mr. Maharaj did not know. Mr. Dames could have walked back into his room at any time, but fortuitously did not. Did it make sense that Mr. Maharaj would commit a murder in a very public hotel under such circumstances?

More important, there were many, many facts that the jury did not know. The Moo Youngs were not what they seemed – they were laundering drug money around the Caribbean to the tune of *five billion dollars* and they were skimming a percentage off the top. The Colombian drug cartel, a very dangerous enemy, therefore had a significantly greater motive to kill the Moo Youngs than did Mr. Maharaj.

Eddie Dames was a Bahamian drug dealer who has now been linked to the Columbian drug cartel. Alibi witnesses established that Petitioner was 40 miles away at the time of the crime. "Eye witness" Butler failed a polygraph in several respects concerning his story, while Petitioner had passed one asserting his innocence.

Petitioner admitted – and police records reflected his admission – that he had been in Room 1215 earlier that morning for a business meeting, set up by Butler, with this Eddie Dames, to discuss distribution of Mr. Maharaj's

fledgling newspaper, the *Caribbean Times*. The jury never heard these facts, as trial counsel advised Petitioner not to take the stand. The jury heard from not a single alibi witness; defense counsel called not a one.

2. The Facts Necessary to an Understanding of the Issues

Krishna Maharaj, a British citizen, was born in Trinidad on January 26th, 1939. He moved to England in 1960, and lived there until 1985. He became a very successful businessman. In 1985, he began to spend time in Florida, since he had investments in real estate in the Fort Lauderdale area. He hoped to divide his time between England and Florida after he retired.

Mr. Maharaj had once been friends with a Jamaican who had moved to the United States, Derrick Moo Young, but by 1986 they had fallen out. The State insisted that their declining relationship was accurately described in various articles published by one Eslee Carberry in a local tabloid, the *Caribbean Echo*. These detailed Mr. Maharaj's supposed frauds on the Moo Youngs and pending criminal charges in England; their publication was meant to be the motive for Mr. Maharaj's crime. *Maharaj v. State of Florida*, 597 So. 2d 786, 788 (Fla. 1992).

The jury did not hear that virtually every fact (including the British "criminal charges") was known to the prosecution to be false, and that the extent of Mr. Maharaj's "revenge" was to start a rival newspaper, the *Caribbean Times*, which was committed to rise above such scandal-mongering, and never even mentioned Carberry or the Moo Youngs.

Under the State's theory, Mr. Maharaj asked Neville Butler, a recent acquaintance, to set up a meeting with the Moo Youngs in Room 1215, whereupon Mr. Maharaj shot them in Butler's presence. Detective John Buhrmaster testified that Mr. Maharaj denied ever being in the room. This was very damaging since it was demonstrably false; Mr.

Maharaj's fingerprints were found in the room. Yet, the deposition of another officer reflects Detective Buhrmaster previously stating that Mr. Maharaj admitted to being in the room. The jury never heard this because trial counsel did not present it.

The prosecution theory made little sense in the first place. Mr. Maharaj was seen by an independent witness sitting in Room 1215 alone reading a newspaper shortly after 8 a.m., although the prosecution had evidence that the Moo Youngs were scheduled to arrive at 12:15 p.m. Petitioner has consistently insisted that Butler arranged for him to meet Eddie Dames, a friend of Butler's from the Bahamas, about distributing the *Times* in the islands. Mr. Maharaj left before 10 a.m. because Dames did not show. Mr. Maharaj had alibi witnesses who placed him in Fort Lauderdale at the time the crime took place, at least two hours later. Yet counsel advised Petitioner not to testify (based on a misapprehension of the facts) and failed to speak with most of his alibi witnesses, much less call any of them. The jury never heard this critical evidence.

The State also presented evidence from Tino Geddes, who initially confirmed Mr. Maharaj's alibi, but who testified at trial to outlandish stories about Mr. Maharaj buying camouflage uniforms for a ground assault on the Moo Young home. His stories were pure fantasies and provably so – but counsel did not depose Geddes, and was not prepared to impeach him.

Even as the State's star witness, Butler's story at trial was flimsy. He supposedly arranged for Mr. Maharaj to meet with the unsuspecting Moo Youngs in Dames' room. Dames allegedly knew nothing about the planned crime, and was off shopping with an associate from the Bahamas, Prince Ellis, at the time of the murder. Ellis has now recanted the testimony he gave for the State, and admitted that Dames was involved in drugs and in the crime, and that Mr. Maharaj was framed.

The jury never heard this – and the state court refused to consider it.

As the "eye witness," Butler testified that Mr. Maharaj shot the Moo Youngs using only one glove, *à la* Michael Jackson. Butler said that the two of them then sat in a car at a meter outside the hotel for three hours watching the police, waiting for Eddie Dames [Godot?], because Mr. Maharaj supposedly wanted to verify that Dames actually existed. Again, this was wholly inconsistent with Butler's previous statement to police that Mr. Maharaj and Dames had met in the lobby earlier.

The State's case hinged almost entirely on Butler's testimony. If Butler was credible, then Mr. Maharaj was guilty; if not, Mr. Maharaj was acquitted. To ensure victory, the State suppressed critical impeachment evidence, and even lied to the judge (and the Florida Supreme Court), saying that Butler had passed a polygraph test. In truth, he had failed it in significant parts. Mr. Maharaj had meanwhile passed a test asserting his innocence.

The State's case never made any sense, even in 1987. It defies belief that Mr. Maharaj planned to commit a murder in the Dupont Plaza Hotel, where he was well known, arriving over four hours early, using a gun that was not silenced, in a room registered to a man he did not know, who could come in at any moment.

The key to this conviction lies in the State's suppression of an unparalleled amount of *Brady* material. The State had material in its files demonstrating that far from Mr. Maharaj being the only person with an axe to grind with the Moo Youngs, as the State claimed, there were others with a far stronger motive to kill. This included evidence, incredibly, that the Moo Youngs were involved in laundering money around the Caribbean to the tune of *$5 billion*, and were negotiating to buy a bank from Manuel Noriega's Panama for *$600 million*. The Moo Youngs were skimming one percent

off the top of the money they were laundering – an enormous amount of money, and a weighty reason to fear for their lives at the hands of the cartels. Eddie Dames turned out to be a drug dealer with links to F. Nigel Bowe, an attorney who in 1985 had been charged with a large drug trafficking scheme involving the Medellin Cartel. Bowe's Bahamian law office was the registered address of the Moo Youngs' front corporation, *Cargil International (Bahamas)*. Bowe had links with Adam Amer Hosein, a Trinidadian who had passed himself off as the then-wealthy Krishna Maharaj at horse races, and who – according to a suppressed telephone message – had called Room 1215 the morning of the crime. The only other room occupied that day on the twelfth floor of the hotel was rented to a Colombian whom evidence now suggests is linked to cartels.

Hosein, who supposedly had no links to the victims, was actually an officer in another Moo Young corporation, *Amer Enterprises*, that bore his middle name. Prince Ellis, the man supposedly shopping with Eddie Dames when the murders took place, now admits that Dames was not an upstanding citizen, but rather was a drug dealer in the Bahamas. This, and a plethora of other suppressed evidence, points inexorably to the extraordinary truth: Petitioner was set up by drug dealers who had a very powerful motive to want the Moo Youngs dead.

Normally, cases seeking a writ of certiorari focus on technical issues that – while very significant – often bear little relationship to the most important issue of all: whether the individual is actually guilty of the crime for which the State sought his death. This is not the case here. We now know that the State's theory at trial was false, and relied heavily for its success on defense counsel's failure to prepare, and the State's suppression of extremely favorable evidence. Kris Maharaj is an innocent man who has struggled for almost 20 years to clear his name. This Court should grant rehearing, and at least permit the lower court to

assess his evidence of innocence under the proper standard recently announced in *House v. Bell*, 126 S. Ct. 1024 (2006).

REASON FOR GRANTING REHEARING

Since Mr. Maharaj filed his original petition, there has been a decision of great significance that illustrates how the lower court was mistaken in considering his case.

I. WHETHER, GIVEN A CASE FOR INNOCENCE THAT IS COMPELLING, THE CASE SHOULD BE REMANDED TO THE LOWER COURT FOR FURTHER CONSIDERATION IN LIGHT OF *HOUSE v. BELL*?

In the Eleventh Circuit, the state argued that many of Petitioner's claims were procedurally barred. Mr. Maharaj – as he has argued consistently – suggested that even were this the case, there were various reasons why the bar should be ignored, including his evidence of innocence. The Eleventh Circuit simply ignored this, barred one claim, *Maharaj VI*, 432 F.3d at 1319, and refused to expand the COA to consider claims that should clearly not have been barred. *Id.* at 1303 & n.1.

If there is an independent state bar to federal review, it may be overcome by a showing of "cause" and "prejudice". In *Engle v. Isaac*, 456 U.S. 107 (1981), the Court stated that "[t]he terms 'cause' and 'actual prejudice' are not rigid concepts; they take their meaning from the principles of comity and finality discussed above. In appropriate cases those principles must yield to the imperative of correcting a fundamentally unjust incarceration." *Id.* at 135.

This Court later went on to clarify that a fundamental miscarriage of justice means a prisoner is able to make a colorable claim of factual innocence. *Kuhlmann v. Wilson*, 477 U.S. 436, 454 (1986) ("In the light of the historic purpose of habeas corpus and the interests implicated by successive petitions for federal habeas relief from a state

conviction, we conclude that the 'ends of justice' require federal courts to entertain such petitions only where the prisoner supplements his constitutional claim with a colorable showing of factual innocence.").

In *Schlup v. Delo*, 513 U.S. 298 (1995), the Court identified the proper standard: "petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Id.* at 327.

Subsequent to the filing of Mr. Maharaj's petition for certiorari with this Court, the Court has defined what the *Schlup* "more likely than not" standard means, in a context similar to Mr. Maharaj's case. *House v. Bell*, 126 S. Ct. 1024 (2006).

In *House*, this Court held that the petitioner had met the *Schlup* standard despite various pieces of highly inculpatory evidence. There was unimpeached evidence that showed that the petitioner was wiping his hands on a black rag on the day after the murder, near an embankment where the victim's beaten and battered body was found; the petitioner had recounted a highly suspicious tale of his whereabouts on the evening of the murder, beginning at his girlfriend's trailer, proceeding to a late night walk for no apparent reason, and concluding with a return to the trailer sans shirt and shoes, but with a story of being accosted by people in a car who fired shots at him and caused him to injure his knuckle. *House*, 126 S. Ct. at 2070 *et seq*. *See also Souter v. Jones*, 395 F.3d 577, 592 (6th Cir. 2005) (allowing passage through the *Schlup* innocence gateway when a petitioner's new evidence was cumulative with that presented at trial and merely served to further impeach the State's case); *Jaramillo v. Stewart*, 340 F.3d 877 (9th Cir. 2003) (allowing passage through the *Schlup* innocence gateway for a petitioner who pled guilty when one new witness and some evidence from the autopsy supported a defense of self-defense); *Bragg v. Norris*, 128 F. Supp. 2d 587 (E.D. Ark. 2000) (allowing passage through the *Schlup* innocence gateway when new

evidence impeached an undercover agent who was the State's main witness).

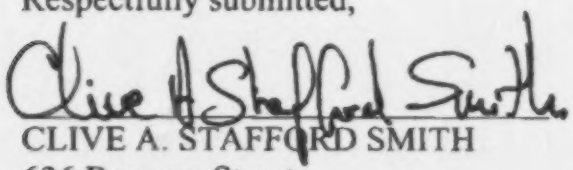
As detailed in the statement of facts, Petitioner has produced evidence of innocence that is considerably stronger than the proof offered by Mr. House. At the very least, then, the Eleventh Circuit should be asked to reconsider its earlier ruling in light of this case.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant rehearing and remand his case to the Eleventh Circuit Court of Appeals for further proceedings consistent with *House v. Bell*.

By my signature I hereby certify, pursuant to S.Ct. R. 44, that the grounds set forth in this petition for rehearing are limited to intervening circumstances of a substantial or controlling effect, and include substantial grounds not previously presented.

Respectfully submitted,



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October 27, 2006

APPENDIX

APPENDIX G

SUPREME COURT OF THE UNITED STATES
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[Received OCT. 6, 2006]

William K. Suter
Clerk of the Court
(202) 479-3011

October 2, 2006

Mr. Clive A. Stafford Smith
636 Baronne Street
New Orleans, LA 70113

Re: Krishna Maharaj
v. James R. McDonald, Secretary, Florida Department of Corrections
No. 05-1555

Dear Mr. Smith:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
WILLIAM K. SUTER, Clerk